

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**MICHAEL R. STEINWAY, PEGGY
A. STEINWAY, and DAVID W. CROWELL,**

Plaintiffs,

v.

**THE VILLAGE OF PONTOON BEACH,
a Municipal Corporation; and in their
Individual and Official Capacities, THE
VILLAGE OF PONTOON BEACH, ILLINOIS
POLICE CHIEF CHARLES, LEUHMANN,
PATROLMAN JOHN SIMMONS, #062, and
LIEUTENANT DAN ABLE, #053,**

Defendants.

Case No. 06-cv-1043-DRH

ORDER

HERNDON, Chief Judge:

On December 8, 2009, the Court issued an Order (Doc. 97), denying without prejudice Defendants' Motion to Continue Trial (Doc. 96). In the Order, the Court allowed Defendants leave to file an amended motion to continue trial, demonstrating that their initial motion was made in good faith by supplying supporting evidence to show that defendant Simmons' vacation was, in fact, planned before the trial date was set on September 18, 2009, and/or reasons explaining the misrepresentation. Now before the Court is Defendants' Amended Motion to Continue Trial (Doc. 98). Defendants again seek to continue the trial date, currently

set for January 11, 2010, as it conflicts with defendant Simmons' previously-scheduled family vacation. The Amended Motion only adds for additional verification the Affidavit of John Simmons (Doc. 98, Ex. B), in which he states that his family vacation was planned several months before the current trial date was set. Simmons avers that the purpose of the vacation is to see family for the holidays and also it would be difficult for his wife to travel with their two young sons without him. Moreover, he states that the airplane tickets are non-refundable. Lastly, the Amended Motion also reiterates the fact that Plaintiffs' counsel has no objection to the requested continuance.

Motivation for not wanting to ruin one's vacation was never the issue, only whether the vacation was actually booked prior to the final pretrial conference in September, when the trial date was set. The Court does not have reason to question the veracity of defendant Simmons' statement regarding when the vacation was booked, despite the flight itinerary showing a November date. Perhaps, for security reasons, Defendants did not want to show other verifying documentation, although it could have been sent to chambers for an *in camera* examination. In any event, none of this scrutiny would have been required if the original motion would not have had a statement inconsistent with the proffered verification. Furthermore, if counsel would have become familiar with all exclusionary dates before the final pretrial conference, this exercise could have been avoided. However, the Court believes the request for a continuance to be made in good faith and thus, for good cause shown, Defendants' Amended Motion to Continue Trial (Doc. 98) is

GRANTED. Accordingly, the jury trial for this matter is hereby rescheduled for **Monday, April 5, 2010 at 9:00 a.m.** (subject to any criminal trials on this Judge's docket).

IT IS SO ORDERED.

Dated this 16th day of December, 2009.

/s/ David R. Herndon

Chief Judge
United States District Court